

## REMARKS

Claims 17-24 and 26-48 are pending. Claims 17-24 and 26-39 are withdrawn from consideration.

### Restriction Requirement

The Restriction Requirement sets forth a requirement for restriction between Group I – claims 17-20, and 26-28 drawn to a method of treating a condition related to resistance to cell death; Group II – claims 21-22 drawn to a method of treating a condition related to cell death susceptibility; Group III – claims 23-24 and 29-39 drawn to a method of administering to a patient a pharmaceutical comprising a cytotoxic factor; and Group IV – claims 40-48 drawn to a method of contacting cells with a cytotoxic factor.

Applicants elect, with traverse, to prosecute Group IV, claims 40-48. Applicants traverse the restriction, with respect to Group III, on the grounds that the high degree of relatedness between the methods results in a *de minimis* amount of additional subject matter in relation to Group IV alone and, thus, a *de minimis* amount of additional searching. Accordingly, in the interest of efficiency and cost to both the applicant and the Patent Office, applicants respectfully request that Groups III and IV be searched and examined together.

With respect to Group IV, the Restriction Requirement further requires two species elections. The first election contends that the elected claims include a species of different cancers listed in claim 45. Without accepting the position set forth in the Restriction Requirement, applicants elect melanoma cells as the first species for examination. Claims 40-48 read on the elected species.


The second species requirement contends that the included claims read on a genus of patentably distinct species, namely the various cytotoxic

factors. Without accepting the position set forth in the Restriction Requirement, applicants elect azurin as the first species for examination. Claims 40-47 read on the elected species.

Applicants submit that the present application is now ready for examination on the merits. If, for any reason, the Examiner is unable to allow the application on the next Office Action and feels that an interview would be helpful to resolve any remaining issues, she is respectfully requested to contact the undersigned attorney at (312) 321-4229.

Respectfully submitted,

Dated: January 25, 2005

  
John Murray, Ph.D.  
Registration No. 44,251  
Attorney for Applicants

BRINKS HOFER GILSON & LIONE  
P.O. BOX 10395  
CHICAGO, ILLINOIS 60610  
Telephone: (312) 321-4283